Title: OBJECTION TO TREE PRESERVATION ORDER (NO. 14/2016) – YEW TREE AT ABBOTSMERE, TILFORD ROAD, TILFORD

Portfolio Holder: Brian Adams
Wards Affected: Frensham, Dockenfield and Tilford

Summary and purpose:

To consider an objection to the making of a Tree Preservation Order (TPO) and to determine whether the Order should be confirmed, with or without modification.

How this report relates to the Council’s Corporate Priorities:

Environment – The Council is committed to protecting and enhancing the Borough’s landscapes. There are environmental benefits in retaining trees which merit special protection.

Financial implications:

The confirmation of the TPO has a resource implication for the processing of tree works applications in the future.

Legal implications:

Legal implications are covered under human rights implications.

Background

Tree Preservation Order (TPO) 14/2016 was made on 28th September 2016. It affords protection to one yew tree situated on the property Abbotsmere, Tilford Road, Tilford.

Following failure to agree a compromise over the extent of branch pruning works required to alleviate a new neighbour’s concerns regarding growth over the adjacent boundary, the tree owner requested that the tree be made subject of a TPO.

In accordance with saved Policy D6 of the Waverley Borough Local Plan 2002 the Council will protect significant trees and groups of trees by using Tree Preservation Orders. In doing so the Council will have regard to:

a) the condition of the trees
b) their contribution to the public amenity of the area including appropriateness of the trees to their surroundings and the amount of tree cover in the area
c) the historical significance of the trees and/or rarity of the species
The Council will encourage good management of important trees and groups of trees. Where work is proposed to protected trees or groups of trees the Council will take account of public safety and the retention of amenity, historic and wildlife value. Where appropriate, new tree planting will be required.

Under Section 198 of the Town and Country Planning Act (1990) the Local Planning Authority in pursuance of its powers has the ability to make trees subject of preservation orders in the interests of amenity when the threat or loss of such trees may result in a negative effect to the character of the local landscape.

The tree was assessed in accordance with the Council’s adopted Tree Guidelines (2012). The tree was under threat from potential disfiguring, inconsiderate lopping. It was deemed expedient to place a TPO on the tree to safeguard it by exercising a level of control over future works that could significantly impact upon the tree’s safe useful life expectancy. The order has been made in recognition of the tree’s size, age, species and contribution to the visual amenity and character of the landscape.

Location of Yew tree to front of garage at Abbotsmere, Tilford Road
Objection

The objection has been received from Mr Smith, the owner of Abotts Pond Cottage, Tilford Road, situated due south of Abbottsmere where the yew is located. The objection is on the following basis (full details of correspondence received forms appendix 1):

- that the tree is not considered of significant historical or arboricultural value;
- that the tree poses a potential risk to adjacent people and property;
- alleged root damage to an existing driveway;
- cost and responsibility for tree pruning.

Officers’ response

The Town and Country Planning Act 1990 places a duty on the local planning authority that 'if it appears expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area'. The Act does not define ‘amenity’ however, it is generally accepted that this appears to mean ‘the quality of being pleasant or agreeable’. Local Planning Authorities should be able to show that a reasonable degree of public benefit would accrue before a TPO is made or confirmed.
The yew tree is visible from the Tilford Road thoroughfare and contributes positively to the character of the street scene. The tree has a stem girth in excess of 4.5m and a balanced crown form with radial branch spread of approx. 9m in all directions. It is a large tree for the relatively slow growing species and its size equates significant age. The Tree and Landscape Officer is aware of only one other yew of similar size within the Parish of Tilford.

The TPO does not alter the duty of care owed to third parties by tree owners as laid out in the Occupiers Liability Acts (1957 & 1984). If adequate evidence were presented to the Council that the tree presents an unreasonable level of risk to people or property then the Council would not unreasonably withhold consent for works to remedy that situation. The tree owners had the tree inspected by a competent arboriculturalist in 2016. It was found to be of fair form and condition which was confirmed by Officers.

No accompanying information has been received with regard to the tree posing an altered or unreasonable risk of future branch failure in terms of its relationship with the adjacent dwelling, garden or the driveway partially beneath the tree’s crown.

The driveway of the Abbots Pond Cottage has suffered some cracking and damage to the tarmac surface which may have been partially attributable to root incursion from the yew tree and/or some fir trees that have recently been removed on the boundary. The driveway will require re-surfacing in due course in any event as part of the property’s ongoing refurbishment.

The Yew is located approximately 3m from the property boundary and the branch encroachment extends to within approximately 2m of the north western corner of the objector’s dwelling. The tree has reached a mature age and as such it is not considered to have substantive future growth potential.

Officer advice has been given on an appropriate specification and extent of pruning to shorten lower trailing branches above the driveway and reduce branch growth towards the dwelling. The tree owner remains at liberty to remove deadwood and damaged branches under exception from the need for a formal tree work application. Likewise this exception applies to the adjacent property owner should this operation be required in branches overhanging the boundary. A right to appeal is maintained in the future to any refused tree work application.

The costs associated with undertaking tree work are not altered by its protection with a TPO. There is no onus on the tree owner to prune back branches overhanging the property boundary. If the neighbour wishes to prune back the tree, consent to an application for reasonable tree pruning in accordance with the relevant recognised industry standard (BS3998: 2010 Tree work – Recommendations) would not be unreasonably withheld.

**Human Rights Implications**

In deciding to confirm the Order, the Council must have regard to the protection of human rights of the objector and others affected by the decision.
The rights of the European Convention affected by the decision arise from:

**Article 8** - protection of the right to respect for one’s private and family life, home and correspondence.

Relevant to the objection regarding a tree with roots and branches crossing the boundary of land within the objectors’ ownership.

The decision recommended by Officers to confirm the Order will interfere with the rights of the objector otherwise protected by this Article. However, the interference is in accordance with the law and justified in the public interest to protect trees, which have an impact on the amenity of the area.

The existence of the TPO will not detract from the objector's legal rights at common law. This is to say that the objector will still be entitled to take any private law action if considered necessary. Confirmation of the Order will not fetter such private law rights. So although there maybe a justified interference with Article 8 and the right to peaceful enjoyment of property, any private law remedies will still be available to the objector.

The objectives of the Town and Country Planning Act 1990 are met by including measures that allow for the protection of trees. The preservation of trees is necessary to preserve the visual amenity of the area. The Order is necessary in furthering the legitimate aims of the Development Plan. To confirm the Order does not place a disproportionate burden on the tree owner or neighbour, who retain the right to make applications for works to trees. In these circumstances the confirmation of the Order is not considered to be an unjustified or disproportionate interference with the convention rights, and is the only action by which the Council may secure protection of the tree referred to.

**Conclusion**

It is your officers’ view that the objections raised against the making of Tree Preservation Order 14/2016 are not substantiated and do not override the public amenity value presented by the tree.

**Recommendation**

It is recommended that the Tree Preservation Order 14/2016 applying to a Yew tree on land at Abbotsmere, Tilford Road, Tilford be confirmed without modification.

**Background Papers**

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.
APPENDIX 1

- The Objection E-mail and Associated Correspondence

From: Darren Smith  
Sent: Tuesday 06 December 2016 15:11  
To: Andy Clout; Darren Smith  
Cc: TreeAdmin  
Subject: RE: TPO 14/16 - Yew tree at Abbotsmere, Tilford

Hello Andy

I still fail to see how the tree has any significant historical or arboricultural value. It has (and might still be) caused damage to my driveway which appears to be of no interest to anyone as long “as the tree is ok” but what happens if I am faced with an enormous repair bill caused mainly from root incursion into my property, which must surely be linked to the fact that the branches have been allowed to sprawl out of control – hence forcing the root network to expand to search for nutrients.

It is my contention that the tree should be trimmed back so as not to cross over into my property, that it still poses a danger to pedestrians given that it is over the only pedestrian access to my property, and the owners next door seem only concerned in having a TPO placed but with no forethought for the impact it has on me, my enjoyment of my home and surely my right to safe passage to and from my home.

Or am I now expected to post a health & safety warning at the top of the drive due to the inconsiderate nature of the next door neighbours and a tree that has been left to sprawl and spread because no one wanted to spend the money to cultivate and safeguard it – what is more costly in this situation, trimming a tree or the health of a human being?

This might seem a little dramatic but it won’t be when it hits the local press after someone incurs an injury and I am compelled to come forward with “what measures were taken to avoid”.

So in essence, no, I am not happy. I want an order in place for the tree to be trimmed, as it isn’t my tree, the cost should be borne by the owners.

I think that puts my view as succinctly as possible, and by the way I have been told by several “experts” that it isn’t even a willow but I cannot admit to having knowledge on the point either way.

Darren A Smith
From: Andy Clout  
Sent: 06 December 2016 12:27  
To: 'Darren Smith'  
Cc: TreeAdmin  
Subject: RE: TPO 14/16 - Yew tree at Abbotsmere, Tilford

Dear Darren,

Further to my reply addressing the concerns raised in your original e-mail, I would be grateful if you would get in touch to discuss whether you have any outstanding concerns or issues that you feel have not been broached.

The Council have a 6 month period from the making of the TPO in which to confirm it and I wish to ensure that there are no outstanding misconceptions or uncertainties regarding its effect prior to progressing the confirmation process.

Many thanks

Andy Clout  
Landscape and Tree Officer  
Planning Services  
Waverley Borough Council  
Direct line: 01483 523309  
www.waverley.gov.uk

From: Darren Smith  
Sent: Friday 21 October 2016 11:11  
To: Andy Clout  
Subject: RE: TPO 14/16 - Yew tree at Abbotsmere, Tilford

Thank you Andy

It is my contention that the owners of Abbotsmere should be applying and incurring the cost for pruning the tree, I don't appreciate that any financial or time burden beyond that already expended should be at my door.

With your comment I will pose this to them.

My driveway will need to be inspected as a part of the renovation works that I would intend to complete at my property as the driveway has become a potential hazard due to the distortion from tree root systems.

From: Andy Clout [mailto:Andy.Clout@waverley.gov.uk]  
Sent: 21 October 2016 11:05  
To: 'Darren Smith'  
Cc: TreeAdmin <TreeAdmin@waverley.gov.uk>  
Subject: TPO 14/16 - Yew tree at Abbotsmere, Tilford

Dear Darren,

Thank you for your mail raising your concerns regarding the recently served Tree Preservation Order (TPO) on the yew tree adjacent to your property. I address your points of concern as follows:
The tree is considered to be a local landscape feature of significant public amenity value due to its species, age and size.

It was subject of an assessment by a qualified arboricultural consultant in April this year as part of the current planning application for development at the property (ref: WA/2016/1338). The report did not highlight any issues of concern or recommend any more detailed inspection of the tree’s structural condition. Some pruning works were recommended to remove a broken branch and lift the crown to provide improved clearance of the existing garage.

The duty of care for the tree remains with the tree owners. They have been prudent in having a competent person assess the tree’s condition. A TPO does not alter legal responsibilities, it serves to ensure that specific trees are not removed or lopped indiscriminately where their loss or wounding of serious detriment to future tree health or form, would have a significant impact on public amenity.

As part of the assessment of the tree for a TPO, the branch spread over your property was appraised. It was considered that the current relationship is not unreasonable. Some pruning to lift the crown over the driveway by shortening small diameter trailing branching to give 4 – 5m clearance above driveway level and tip pruning of the longer branches by up to 2m to give reasonable separation (without creating large wounds) maintaining a flowing crown form, was noted as a viable way forward to reduce any potential inconvenience without due harm to the tree. An application made on this basis would be supported in principle.

The root system of the tree is protected and this does have a bearing on potential development of your property. Some surface distortion of the driveway, likely caused by roots of either the yew or recently removed trees, was noted and care will be required in re-surfacing to avoid root damage.

The greensand soil is not shrinkable (such as a clay) and thus is not conducive to volumetric change from moisture abstraction that can cause subsidence of structures. There is no foreseeable concerns in relation to trees at reasonable proximity damaging the foundations of houses in this area.

I trust that the above points broach your principal concerns in relation to the TPO. I have attached an application form and relevant guidance information should you like to make an application to prune the tree.

If you have any outstanding concerns or wish to maintain an objection to the TPO on specific grounds, please contact me accordingly.

Regards

Andy Clout
Landscape and Tree Officer
Planning Services
Waverley Borough Council
Direct line: 01483 523309
www.waverley.gov.uk
Hello Andy

As the owner of Abbots Pond Cottage which adjoins the property in which the proposed TPO is requested I have the following observations and objections to be made:

The tree in question I am told is in excess of 400yrs old, I have no immediate means of proof or disproof of this point and regard it as moot to my overriding concerns.

I raised a valid concern with the owners of Abbotsmere about the tree as follows:

The tree has extensive branches which over sail considerably into my property by at least 6 feet across the main driveway which is the sole access to the property.

My concerns are therefore as following:

There has been no recent inspection of the tree to ascertain its structural integrity and therefore I have a duty of care towards visitors to my property that they can conduct safe passage from the highway to the entrance of my new home. Given the current condition of the tree I cannot be certain that at any time a branch might not fall or cause severe damage to property by falling on a car/vehicle that passes beneath or indeed that it could fall on a person and cause a fatal injury.

The owners were somewhat dismissive and simply replied that the golf club (the former owner of Abbots Pond Cottage) didn't care and let them allow the tree to simply sprawl (my word) across the boundary.

Under normal circumstances I would be well within my legal right to have the tree trimmed back to the boundary and return said trimmings to the neighbour however I am not considering anything as dramatic.

I simply need to establish for insurance purposes that the tree is in good condition and doesn’t pose a threat to either vehicles or more importantly human life given that it is mandatory to pass beneath it every single time the property is accessed.

I do not consider this to be an unreasonable request and it would be my preference that the tree be sensitively trimmed back with these concerns in mind – this is setting aside the debris that falls from the tree into my property.

I must also bear in mind for insurance purposes the danger of tall trees near residential property and I do not see why I might be at risk of a loaded premium or inability to obtain cover simply because of a neighbouring tree not being managed properly. My concerns were dismissed out of hand as if I simply wanted to hack it to the ground – this is not the case. Nor do I have any interest or sympathy for monies spent on so called expert reports from vested interest groups.

My concerns are thus:
If there is accident or injury I need to know that from my perspective I have taken all reasonable care to avoid such incident by consideration of the condition of the tree, trees do over time, decay from the inside, therefore we simply cannot presume that 400yrs down means another 400 to go. The recent sudden changes in weather patterns must be a consideration and I fail to see how simply blindly adding a TPO addresses any concerns to public health. After all, if something happened to a council official on a visit to my home and they were rendered an injury from said tree, to whom should I direct the afflicted? To next door? Or the council for having applied a TPO without due care and consideration?

So to reiterate:

I want the tree inspected for structural integrity and if a TPO is placed, said inspections must be set with a mandatory review, otherwise should any incident occur which relates to the tree, I will have no other choice than to refer my insurer or that of the afflicted party to Waverley Council as your neglect could be considered a material contribution towards damage, danger or injury.

This of course also belies the potential underground issue of the tree root system and the fact that at some stage it could undermine property which will also be totally unacceptable but potentially avoidable if the inspection renders the need for some sensitive trimming back, which would therefore require a less extensive root network to nourish the remaining tree and could indeed contribute towards a longer life.

I am not against trees, I wouldn’t have bought a property with trees in them if that were the case. But when it comes to human safety, that must come first.

Therefore I would like the above comments to be given full consideration as this matter progresses.

Please confirm receipt of this email.

Thank you for your time and consideration

Darren A Smith